Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

RICHARD RIVERA-GALARZA
Petitioner,

v.

MARIA COLÓN-LABOY
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

PETITION FOR A WRIT OF CERTIORARI

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94 pp

QUESTION PRESENTED

IS THE HOME STATE AN INDISPENSABLE REQUIREMENT TO DETERMINE IF FULL FAITH AND CREDIT SHOULD BE GIVEN TO A SISTER STATE CHILD CUSTODY DETERMINATION?

MAY A STATE EMIT A VALID CUSTODY DETERMINATION IF THE STATE HAS CONTINOUS JURISDICTION, EVEN IF THAT STATE IS NOT TECNICALLY THE CHILD'S HOME STATE?

WHICH STATE HAS PREFERRED SUBJECT MATTER JURISDICTION OF A CHILD CUSTODY, IF: (i) ONE STATE IS THE CHILD'S HOME STATE, AND (ii) ANOTHER STATE HAS CONTINOUS JURISDICTION OVER CUSTODY DETERMINATION?

LIST OF PARTIES

The parties in the proceeding below are the Petitioner, Richard Rivera-Galarza, and the Respondent, Maria Colon-Laboy.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Richard Rivera-Galarza, by his undersigned counsel, respectfully prays for a Writ of Certiorari to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico in this case.

OPINIONS BELOW

The order of the First Instance Court of Puerto Rico, granting full faith and credit to the New York State Family Courts decree is a non-reported opinion. [App. 31]. The opinion of the Puerto Rico's Appellate Court, revoking the First Instance Court of Puerto Rico is a non-reported one. [App. 9]. The Puerto Rico Supreme Courts resolution denying the discretional remedy to revise the Puerto Rico Appellate Courts decision, is a non-reported decision. [App. 4].

JURISDICTION

The judgment of the Supreme Court of Puerto Rico was entered on January 25, 2002.

This petition is filed pursuant to Rule 13 and 14, Rules of the Supreme Court of the United States. Petitioner Richard Rivera-Galarza invoked subject matter jurisdiction under 28 U.S.C.S. § 1738A, Parental Kidnapping Prevention Act (hereinafter PKPA). The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1254(1).

APPLICABLE PROVISIONS

Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;
(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;
(3) "custody determination" means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;
(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;
(5) "modification" and "modify" refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;
(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;
(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and
(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and
(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination. *28 USCS § 1738A (2002).*

STATEMENT OF THE CASE

This case arose from a controversy commenced by petitioner in which he petitioned the First Instance Court of Puerto Rico to grant full faith and credit to a child custody decree that was entered by a Family Court of New York. In said custody decree, the New York Court ordered the respondent to appear before the Court to continue the proceedings. The Family Court of New York granted the petitioner the provisional custody of the minors, Cristina Rivera-Colon and José A. Colon. [App. 46].

After several incidents, the Court in Puerto Rico dismissed the respondent allegations as a penalty for her continuous and unjustified absence from the judicial proceedings in this district. Therefore, on October 5, 2002 the trial began and extended itself until the next day. Even when the First Instance Court dismissed Mrs. Colon-Laboy allegations, on the trial day she was allowed to testify as part of the Family Relations Prosecutor evidence. The Family

Prosecutor was at that time the counselor representing the minors.

In the foregoing process in Puerto Rico, evidence was submitted demonstrating that the parties had an emotional relationship for several years. Cristina Rivera-Colon was product of such relationship; she was born on November 19, 1992 in New York State. On year 1994 a series of trials were begun between the parties for a diversity of reasons. As consequence of these cases the court of New York made an initial determination of the custody of the minors Cristina Rivera-Colon and José Colon. In this initial determination the custody was awarded to the respondent. [App. 32].

On august 1998 the parties held a trial, record number N-983-4-96, in New York's Court, in which the respective attorney's represented each party and the children were represented by a Judicial Defender named by the court. [App. 32]. As part of the trial the Family Court of New York granted custody to the mother, supervised by the Administration for Children Services. [App. 33]. Half way through the trial, on January 21, 1999, Mrs. Colon without the above mentioned agencies authorization, departed from the State of New York and came to Puerto Rico with Cristina Rivera-Colon and José Colon abandoning her other two children Michelle And Emilio Colon. [App. 33]. These minors are under the petitioners custody even when he is not their father.

On March 2, 1999 Mrs. Colon was summoned to testify in New York's Family Court as part of the proceedings of the case she had filed in such State. It was that day that the petitioner, through manifestations made by the respondents lawyer and the representative of the Administration for Children Services, came to the knowledge that the respondent had moved to Puerto Rico with his children. [App. 33].

Furthermore, on July 29, 1999, Mr. Richard Rivera filed a Petition of Habeas Corpus before the New York State Court. In this Habeas Corpus the petitioner asked the Honorable Court to order the respondent to appear for the continuation of the custody case in the New York Court and to bring the children with her. [App. 33]. As a consequence of the writ for Habeas Corpus the Honorable Judge Harold J. Lynch, ordered that the minors Cristina and Jose to be brought before Honorable Judge Tandra Dawson for the continuation of ulterior proceedings and the final custody determination. Judge Harold J. Lynch awarded Mr. Richard Rivera the children's provisional custody while the case came to an end. [App. 34].

Afterward, the petitioner asked from the First Instance Court of Puerto Rico to give full faith and credit to the child custody determination entered by Judge Harold J. Lynch.

The following facts arose from the evidence that was admitted and accredited by the Court in Puerto Rico:

> "...[T]he children were born and raised in the State of New York until the mother left the State without authorization from the Court; both parents have a significant connection with that State; the Plaintiff continues to live and work in New York; and the minors have medical and school records in New York."
>
> [App. 39]

After both parties presented their evidence, on December 18, 2000, Honorable Judge José A. Ruiz Rivera entered a judgment in which he granted the complaint and ordered the respondent to hand in the children to the

petitioner and to present herself before the New York's State Court for the continuance of the custody trial initiated there. [App. 41]. This judgment was notified on January 31, 2001 to all parties. [App. 28].

On February 15, 2001 the Family Special Relation Prosecutor filed a motion for reconsideration of the judgment. The motion was denied and was notified on August 23, 2001 to all parties. [App. 43].

The respondent appealed said judgment on September 4, 2001. On that day the Court entered a resolution in which it awarded the petitioner the term of three days to present his opposition. After the petitioner filed the opposition with all the requirements of the Puerto Rico Appellate Court, this Honorable Court entered judgment in which it stated the following:

> "Because of the foundations stated above the appealed sentence is revoked."
>
> [App. 26]

From that judgment the petitioner recurred before the Supreme Court of Puerto Rico asking the Court to revoke the Appellate Court judgment. The Supreme Court on January 25, 2002 emitted a resolution expressing the following:

> "Regarding the certiorari petition filed by the Petitioner: Denied."
>
> [App. 4]

REASONS FOR GRANTING THE WRIT

The decision below decides important questions of federal law, which conflicts with the judgment entered by the

Supreme Court of New York in several cases. This decision touches an important question of federal law that has not been, but should be, settled by this Court.

1. Important unsolved federal question.

"The Parental Kidnapping Prevention Act (PKPA or Act) imposes a duty on the States to enforce a child custody determination entered by a court of a sister State if the determination is consistent with the provisions of the Act." *Thompson v. Thompson*, 484 U.S. 174 (1988).

The PKPA legal disposition (28 U.S.C.S. 1738A), in the pertinent, states the following:

> (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State. *28 U.S.C.S. 1738A (a).*

In accordance with the above, paragraph (c) of the same section, states:

> (c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--
>
> (1) such court has jurisdiction under the law of such State; and
>
> (2) one of the following conditions is met:
>
> (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months

before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section. *28 U.S.C.S. 1738A (c).*

As we see, the legality of New York's decree in this case depends on two requirements; (i) whether New York

had jurisdiction under that State's law, and (ii) that one of the requirements of section 1738A (c) (2) is fulfilled.

A. New York's Court jurisdiction at the moment of entering the custody decree

The New York State adopted the Uniform Child Custody Jurisdiction Act (hereinafter UCCJA), which allows the state to determine if it has the necessary jurisdiction to emit a valid custody decree.

Pursuant the UCCJA the New York State may emit a valid custody determination if it fallows the established requirements in section 75-d of the Domestic Relations Law. Therefore, Section 75-d of the Domestic Relations Law, NY CLS Dom. Rel. § 75-d, in the pertinent, establishes the following:

75-d Jurisdiction to make child custody determination

1. A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree only when:

(a) This state (i) is the home state of the child at the time of commencement of the custody proceeding, or (ii) had been the child's home state within six month before commencement of such proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parent, or a child and at least one contestant,

have significant connection with this state, and (ii) there is within the jurisdiction of the court substantial evidence concerning the child's present or future care, protection, training, and personal relationship; or

(c) the child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child; or

(d) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

2. Except under paragraph (c) and (d) of subdivision one of this section, physical presence in this state of the child, or of the child and one of the contestant, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

When we analyze this legal disposition we acknowledge that the state of New York can acquire jurisdiction in a custody case if it fulfills any of the requirements established. From the use of the word "or" we can conclude that the state of New York has to comply with only one of the requirements established in subsection (1) to be able to enter a valid custody determination pursuant to its laws.

"New York has jurisdiction pursuant to its laws if the child and one contestant have a significant connection with New York and there is substantial evidence within the jurisdiction of the court concerning the child present or future care, protection, training and personal relationship pursuant to Domestic Relations Law § 75-d [1][b] (quote omitted). The following are factors to be considered by the court in determining whether a significant connection exists: whether the original custody determination was made in New York (quote omitted); whether petitioner continues to reside in the State after respondent has left with the child(ren) (quote omitted); whether petitioner continues to work in New York and intends to raise his children here if he receives custody (quote omitted); whether the children were born in New York, and lived here for their entire lives until removal to another State (quote omitted); whether the children's extended family resides in New York (quote omitted); whether the parents have a significant connection to New York, to wit, were married here, resided here during the marriage and have relatives who continue to reside here (quote omitted); whether the children's medical and school records are in New York (quote omitted); and whether the children have visited in New York since their removal to another State (quote omitted)." *Jesus A. v. Lizette A.*, 145 Misc. 2d 165 (1989). See also *Irwin v. Schmidt*, 236 A.D. 2d 401 (1997) and *Heitler v. Hoosin*, 143 A.D. 2d 1018 (1988).

These factors are consonant with the PKPA's purpose to put an end to the practice of many fathers of abducting their children searching for a legal forum where a favorable custody determination may be awarded (*forum shopping*).

"One of the Uniform Child Custody Jurisdiction Act (UCCJA), and the PKPA purposes is to deter the unilateral removal of children from this state by a parent to obtain a

favorable custody award elsewhere." *Jesus A. v. Lizette A.*, Supra.

In the trial of the present case, it was proven that the custody determination was originally entered by the state of New York; that the petitioner continues to live in the state of New York; that the petitioner continues to work in New York; that the children were born in New York; that the children were raised in New York until the mother abducted them and came to Puerto Rico; that the children's medical records are found in New York; that the school records have always been in New York; that the children friends are in New York and that New York was the marital residence of the parties in this case.

These are only some of the factors that lead us to conclude that at the moment that the custody decree was entered in this case, the state of New York had the necessary jurisdiction pursuant to its own laws. Once it is concluded that New York had jurisdiction to enter the custody decree, we are bound to analyze if it fulfills any of the requirements established by the PKPA, 28 U.S.C.S § 1738A (c)(2).

B. Requirements established by the PKPA

The section 1738A (c), in the pertinent, establishes the following:

> (c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--
>
> (1) ...; and
> (2) one of the following conditions is met:
>
> (A) ...;
> (B) ...;

(C) ...;
(D) ...; or
(E) the court has continuing jurisdiction pursuant to subsection (d) of this section. *28 U.S.C.S. 1738A (c).*

First, it is clear that from the same section 1738A (c)(2) emerges that a state has to comply with only one of the requirements established in said section. Among those requirements we find that the state has continuous jurisdiction along with that established in subsection (d), 28 USCS §1738A(c)(2)(e). This subsection states that:

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

"The effect of § 1738A (d) and 1738A (f) is to limit custody jurisdiction to the first State to properly enter a custody order, so long as two sets of requirements are met. First, the PKPA defines a *federal* standard for continuing exclusive custody jurisdiction: the first State must have had proper initial custody jurisdiction when it entered its first order (according to criteria in the Act) and it must remain 'the residence of the child or any contestant' when it later modifies that order. Second, the Act incorporates a *state law* inquiry: in order to retain exclusive responsibility for modifying its prior order the first State must still have custody jurisdiction as a matter of its own custody law. Even if the federal and State criteria for continuing jurisdiction are met, the first State's courts can, if they choose, voluntarily relinquish their jurisdiction in favor of the court better situated to asses the child's need." *Meade v. Meade*, 812 F. 2d 1473 (1987).

In the present case, the New York State maintained continuous jurisdiction to enter a custody determination under its own laws, fulfilling like this the *states criteria*.

On the other hand, at the moment when the New York Court entered the custody decree, such state was and still is, the residence state of the petitioner.

On its behalf the First instance Court concluded:

"Around or by 1994 a series of litigations between the parties commenced due to different reasons because of which and as a consequence thereof, the New York Court made an initial decision regarding the custody of the minors Cristina Rivera Colón and José A. Colón, granting it to the Defendant María C. Colón Laboy."

[App. 32].

In addition, the First Instance Court concluded:

"As part of that litigation the Family Court of the State of New York granted custody of the children to the mother supervised by the Administration for Children Services agency."

[App. 33].

Furthermore, at the moment when the mother abducted the children from New York's jurisdiction, the custody case of such children was still pendant. Half way through the judicial process Mrs. Maria Colon disappeared from the state without the Courts authorization and without giving the children's father any notice of her decision. [App. 33]. Neither did the respondent acquire the necessary authorization from the Administration for Children Services that supervised the children custody. It should be noted that at the moment when the respondent parted from New York

State she left behind two other children that she had from prior relationships. [App. 33]. Emilio and Michelle Colon, the respondents' minors that were left behind, are under petitioners custody even when he is not the children's father.

All the facts established above lead us to conclude that the New York State met the *federal criteria*, for which it had continuous jurisdiction to modify the previous custody determination that had been entered.

Even when the custody decree entered by New York met all the requirements established by the PKPA, the Appellate Court in Puerto Rico erroneously determined that the First Instance Court could not give full faith and credit to said custody determination because the minors lived in Puerto Rico for six months and eight days before the trial commenced. [App. 9]. For this reason alone the Appellate Court determined that technically Puerto Rico was the minors home state.

When the Court of Puerto Rico denied granting legality to a custody decree of another state with continuous jurisdiction according to the PKPA, an important federal law issue arose. The result of the Puerto Rico's Court decision is that it concludes that being the home state is an indispensable requirement to determine if full faith and credit should be given to a sister State custody determination. That opened the door for an improper and inconsistent judgment according to law, overturning a judgment that could not be overturned, even when all the requirements are met.

2. <u>Conflicting Decisions</u>.

The decision of the Supreme Court of Puerto Rico denying the discretional Certiorari presented by the petitioner [app. 4], had the effect to confirm and enforce the judgment entered by the Appellate Court. [App. 9]. Therefore, we can

affirm that the judgment entered by the Appellate Court is the Court of Puerto Rico decision.

On its judgment, the Appellate Court wrongfully interprets the law referring to the continuous jurisdiction of a state. When translating the PKPA disposition it understood that subsection 28 USCS § 1738A (c)(2)(E) referred to subsection 28 USCS § 1738A (c)(2)(D) and not subsection 28 USCS § 1738A (d). [App. 21]. On said judgment the Court expressed the following:

"Under to have jurisdiction over a case of this nature, a State has to: (1) have jurisdiction under its own laws, and (2) comply with any of the following conditions: [App. 19]

(A) ...;
(B) ...;
(C) ...;
(D) ...; and
(E) the court has continuous jurisdiction based on the above clause. (Quote omitted.)" [App. 21].

Under the general principle under the announced norms is that the Court where the minor resides is the one that has preferential jurisdiction to intervene in this type of cases. When the minor is moved outside of the jurisdiction, that preference continues for a period of six (6) months after that the new state of residence of the minor will have acquired preferential jurisdiction over the matter (clause A). (Quote omitted.)" [App. 21].

Based on this interpretation is that the Court of Puerto Rico concludes that the home state is an indispensable requirement to determine if full faith and credit should be given to a sister State custody determination.

In this case the Puerto Rico Court's erroneously decided an important federal question in a way that conflicts with the decision of another State Court of last resort and with the United States Court of Appeals.

The decision of the Puerto Rico Court's conflicts with Georgia's Supreme Court decision in *Garret v. Garret*, 267 Ga. 356 (1996); and with the United States Court of Appeals for the Fourth Circuit decision in *Meade v. Meade*, 812 F. 2d 1473 (1987); and with the New York's Court decision in *Irwin v. Schmidt*, 236 A.D. 2d 401 (1997); *Capobianco v. Willis*, 171 A.D. 2d 834 (1991); *Jesus A. v. Lizette A.*, 145 Misc. 2d 165 (1989); *Philip v. Sharon S.*, 137 Misc. 2d 385.

All of these cases recognize that a state with continuous jurisdiction can make a valid custody determination even when that state is not the minors' home state. All of the above quote decisions conflict with the Puerto Rico Court's decision appealed herein.

Puerto Ricos' Court has interpreted differently the PKPA; with this Petition for Writ of Certiorari we have the opportunity to establish a uniform rule so that each state can interpret the PKPA in an equal and uniform manner.

CONCLUSION

The PKPA has impact over thousands of families throughout the United States. It is a law that pretends to discourage child kidnapping by parents that do not get a favorable custody decree. We have the arduous duty to create uniform norms to encourage parents to search for the minors' well being and not for their own. This is the opportunity for this Court to determine a uniform rule that complies with the PKPAs' purpose.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

In San Juan, Puerto Rico,
this 25-day of April 2002.

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Translation

App. 1

THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

RIVERA GALARZA RICHARD APPELLANT

VS.

COLON LABOY, MARIA C. RESPONDENT

CASE: CC-2001-0907 ORIG. CASE: JEX-1999-0130 EX PARTE
ORIG. CASE: KLAN2001-0842----
CIVIL ACTION OR CRIME

COLON SANTIAGO PABLO
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0000000780

NOTICE

I CERTIFY THAT REGARDING THE CERTIORARI PETITION THE COURT ENTERED THE RESOLUTION THAT IS INCLUDED:

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SOTO VEGA JEANETTE - BOX 330466 - PONCE, PR - 00733-0466

PADILLA MONTALVO, CARLOS R. BPO BOX 1175 B COTO LAUAREL PR 007808

SAN JUAN PUERTO RICO JANUARY 25, 2002

(Signed)
Carmen I. Cruz Rivera
CLERK OF THE SUPREME COURT

(Initials)

ASSISTANT CLERK

CERTIFICATION

I LYDIA PLATON qualified as Federal Court Interpreter and Translator under the Federal Court Interpreter Act for Spanish-English Court, certificate number 00056, CERTIFY: that the foregoing is a correct translation of the original document in the Spanish language.

In San Juan, Puerto Rico, on the 23rd of April 2002.

Lydia Platón

LYDIA PLATON
Certified Court Interpreter and Translator

AT THE SUPREME COURT OF PUERTO RICO

RICHARD RIVERA GALARZA Petitioner V. MARIA C. COLON LABOY Respondent	Num. CC-2001-907	Certiorari

RESOLUTION

In San Juan, Puerto Rico, on the 18th of January of 2002.

Regarding the certiorari petition filed by the Petitioner: Denied.

As agreed to by the Court and certified by the Acting Clerk of the Supreme Court. Presiding Judge Mr. Andréu García did not intervene.

(Signed)
Carmen E. Cruz Rivera
Acting Clerk of the Supreme Court

CERTIFICATION

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THE COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
CIRCUIT COURT OF APPEALS
REGIONAL CIRCUIT V / PONCE-AIBONITO

RIVERA GALARZA RICHARD

Vs.

COLON LABOY, MARIA CRISTINA

CASE NO.:
KLAN200100842

RE: CIVIL APPEAL

PABLO COLON SANTIAGO, ESQ.
URB. CONSTANCIA
1735 PASEO LAS COLINA
PONCE PR 00717-2234

NOTICE OF JUDGEMENT

THE SUBSCRIBING CLERK NOTIFIES YOU THAT THIS COURT HAS ENTERED A JUDGEMENT IN THE CAPTIONED CASE DATED SEPTEMBER 28, 2001, WHICH HAS PROPERLY RECORDED AND FILED IN THE RECORD OF THIS CASE WHERE YOU MAY FIND OUT IN DETAIL ABOUT THE TERMS THEREOF.

AND SINCE YOU ARE OR REPRESENT THE PARTY PREJUDICED BY THE JUDGEMENT ABOUT WHICH AN APPEAL RECOURSE MAY BE ESTABLISHED, I ADDRESS THIS NOTICE TO

YOU HAVING FILED IN THE RECORD OF THIS CASE A COPY THEREOF ON OCTOBER 8, 2001.

JOSE R. TORO VARGAS, ESQ. B PO BOX 7191 PONCE

JEANETTE SOTO VEGA, ESQ. B PO BOX 330466 PONCE

GENERAL CLERK PONCE (SUP) B PONCE JUDICIAL CENTER PO BOX 331791

SAN JUAN, PUERTO RICO, ON THE 8TH OF OCTOBER 2001

AIDA ILEANA OQUENDO GRAULAU
CLERK

BY: CARMEN C. RAMIREZ MELENDEZ
ASST. COURT CLERK I

CERTIFICATION

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In San Juan, Puerto Rico, on the 23rd of April 2002.

Lydia Platón

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Certified Court Interpreter and Translator

THE COMMONWEALTH OF PUERTO RICO
AT THE CIRCUIT COURT OF APPEALS
PONCE AND AIBONITO REGIONAL CIRCUIT

RICHARD RIVERA GALARZA	KLAN0100842	Appeal from the Court of First Pleas.
Respondent		
V.		
MARIA C. COLON LABOY		Ponce Superior Part
Appellant		J EX1999-0130

Panel integrated by its president, Judge Brau Ramírez, Judge Ortiz Carrión and Madam Judge Pabón Charneco.

Brau Ramirez, Proponent Judge

JUDGEMENT

San Juan, Puerto Rico, on the 28th of September of 2001.

- I -

Appellant, María C. Colón Laboy appeals a judgement entered against her on December 18 of 2000 by the Court of First Pleas, Ponce Superior Part, in the procedure presented before said forum against the appellant by the respondent, Richard Rivera Galarza.

The Respondent was interested in that full faith and credit

be given to an order entered in his favor on the 29th of July of 1999 by the Bronx County Family Court of the State of New York, in a proceeding regarding a habeas corpus filed before that Court by the Respondent. The order in question ordered the production of the minor children of the couple, Cristina Rivera Colón and José A. Colón, in the New York Court and granted provisional custody over them to the Respondent. The decision was entered in an ex-parte manner without the appellant having been served.

Through the appealed judgement, the Court of First Pleas, after finding the Appellant in contempt, admitted the petition of the Respondent.

The Appellant petitioned the Court that it reconsider its decision and formulate additional findings of facts which was finally denied by the Court on the 10th of August of 2001.

Through a resolution entered on September 4, 2001, we ordered a stay of the proceedings and ordered the Respondent to file his brief. The Respondent has appeared.

We revoke.

- II -

As it arises from the record the parties had a concubinage relationship for several years while residing in Bronx County, in the city of New York. The girl, Cristina Rivera Colón, was born out of that relationship.

In addition, the Appellant has other minor children, among

them, José Colón, and another two siblings named Emilio and Michelle Colón.

On or around 1994, the parties had serious disagreements that culminated in several litigations among them, including controversies about the custody of their daughter and the other siblings of the appellant.

At first the Family Court of the State of New York granted custody of the children to the Appellant under the supervision of the state agency in charge of providing children services.

On January 21, 1999, the Appellant moved to Puerto Rico with her siblings, Cristina Rivera and José Colón. They settled in >Barrio= Camarones of the Municipality of Villalba. At present, the minors attend school in Puerto Rico and maintain their relationships and friendships in this forum. The Appellant left her other two siblings, Emilio and Michelle Colón in New York.

The move by the Appellant was done without notifying the court in New York that had assumed jurisdiction over the controversy regarding the custody of the children, nor the state agency charged with services to the minors. Allegedly, the Respondent found out about the move on March 2, 1999, via the attorney for the Appellant before the New York Court when the Appellant did not appear at a hearing date before that forum.

On July 29, 1999, the Respondent started a habeas corpus proceeding before the Family Court of the State of New York, in Bronx County, petitioning the Court that it order the Appellant to

produce the minors for the continuation of the custody litigation being elucidated before that state by the parties. On that date the minors had been in Puerto Rico for more than six (6) months already.

That same day, the Hon. Judge Harold J. Lynch, from New York State Family Court, Bronx County, entered the corresponding order for the Appellant to produce the children before the court for the final determination regarding custody. The Court granted provisional custody of the minors to the Respondent.

The order from the New York Family Court was entered ex-parte, without hearing the Appellant, as allowed by the Law in that State. N.Y. CLS Family Ct. Act. Sec. 651. Nor was the Appellant served in that process which constituted a procedure different from the custody case between the parties pending in the New York Court.

The Appellant, who was in Puerto Rico, refused to obey the order from the New York Court. Things being so, the Respondent proceeded to file this procedure before the Court of First Pleas petitioning that full faith and credit be given to the determination of the New York Court.

The Appellant appeared represented by the Legal Services Corporation of Puerto Rico and answered the complaint opposing the petition of the Respondent. The Appellant alleged that according to the 1980 Parental Kidnapping Prevention Act of the

United States Congress, the order of the New York Court had been entered without jurisdiction, therefore on the date of the start of the proceedings before that Court, the Appellant and her siblings had already been residing in Puerto Rico for more than six (6) months.

The Family Relations Advocate was timely informed of the proceeding and appeared in the interest of the minors.

After the processing, the Court ordered entering contempt against the Appellant in view of her non appearance at several hearings.

On December 18, 2000, the Court of First Pleas entered the appealed judgement admitting the petition of the Respondent.

In its judgement, the distinguished appealed Part concluded that, although the Respondent and her siblings had been residing in Puerto Rico for more than six (6) months before the start of the habeas corpus procedure before the New York Court, the latter forum did not lack jurisdiction over the matter because it had carried out a previous adjudication regarding the custody of the minors and maintained jurisdiction over said controversy.

The Court acknowledged that the Appellant had to have been notified of the habeas corpus procedure before the New York Court. However, it deemed that it did not affect the validity of the order that was entered. It stated:

> Because of the summary nature of the recourse prior notice **was not** necessary to comply with

> due process since what is ordered therein is that the Defendant appear before that Court to continue with the process that had commenced. The notice needed to comply with due process is given to the petitioned party after the entering of the order, when she is informed of the need for her to appear and face the procedures started against her. In this case the needed notice was met when the subpoena was served (of the complaint before us) upon the person of the Defendant since at that very moment the Defendant obtains knowledge that she has to appear in the State of New York to continue the judicial procedure. Upon serving said subpoena due process is complied with because the petitioned party is given the notice needed for the New York Court to acquire jurisdiction over her person.

The Appellant petitioned a reconsideration of the decision of the First Instance forum and the formulation of additional determinations of facts. Through a resolution entered on August 10, 2001 the Court of First Pleas denied said petitions.

Unsatisfied, the Appellant appeared before this Court.

- III -

In her recourse the Appellant sets forth the commission of several errors before the Court of First Pleas directed to, among other matters, to questioning the jurisdiction of the New York court to issue the habeas corpus order dated July 29, 1999.

Section 1 of Article IV of the Constitution of the United States requires that the States grant Afull faith and credit to the

public actions, documents and judicial procedures of the other States.@ See Aponte v. Barbosa Dieppa, 146 D.P.R. ___ (1998), 98 J.T.S. 105, at page 21; Blatt & Udell v. Core Cell, 110 D.P.R. 142, 145 (1980).

However, this obligation does not operate ex propio vigore but rather there is a need of a determination on the part of the Puerto Rico court granting validity to a decision entered in another state. Sosa Hernández v. Borrás Marin, Registradora, 145 D.P.R. ____ (1998), 98 J.T.S. 85, at page 1,244; Roseberry v. Registrador, 114 D.P.R. 743, 746 - 747 (1963); also, see 32 L.P.R.A. sec. 1798.

In Márquez Estrella, Ex parte, 128 D.P.R. 243 (1991), the Supreme Court of Puerto Rico clarified that the procedure for the recognition and confirmation of judgements entered by foreign courts or by courts of state jurisdictions of the United States is governed by, among others, the following principles:

(1) The procedure is started through a complaint in the corresponding part of the Court of First Pleas against the persons affected by the judgement or by a sworn ex parte petition in which all affected persons are joined.

(2) The procedure is processed in the regular manner provided by the Rules of Civil Procedure.

(3) The complaint or ex parte petition must be accompanied by a certified copy of the judgement whose confirmation is petitioned and a true and exact translation of it into the Spanish

language in the event that it was not originally drafted in that language or in the English language, also requiring that it is a complete and legible copy and that it meets the requirements of Rule 79 of the Rules of Evidence, 32 L.P.R.A. Ap. IV, R. 79.

(4) In every case in which minors could be affected the parents or tutor of the minors must be included and the Family Relations Special Advocate must be notified so that official can defend the interests of the minor.

(5) The review and execution of said judgements are governed by the norms applicable to other normal civil proceedings. 128 D.P.R. at pages 253-254.

The Supreme Court of Puerto Rico also clarified that the recognition of foreign judgements is subject to the following norms: (1) the judgement must have been entered by a court with jurisdiction over the person and matter object of the same; (2) the judgement must have been entered by a competent court; (3) due process must have been observed by the court that entered the judgement; (4) the system under which the judgement was entered must be an impartial one and must not show prejudice against foreigners; and (5) the judgement entered by the foreign court must not be contrary to the public laws of the local forum, nor the basic principles of justice, nor obtained by fraud. Márquez Estrella, Ex parte, 128 D.P.R. at page 250; Efectos Litográficos v. Nat. Paper & Type Co., 112 D.P.R. 389, 395 - 404 (1982).

With respect to the judgements entered by the courts of other jurisdictions of the United States, the Court clarified that hey are worthy of receiving full faith and credit regardless of what the public policy and legal provisions of Puerto Rico are regarding what the subject or matter is. Márquez Estrella, Ex parte, 128 D.P.R. at pages 255-256.

However, even in said cases, it is not in order to recognize the validity of a judgement when the same has been entered without jurisdiction over the matter or person or when the procedure followed is contrary to the guarantee of due process. Márquez Estrella, Ex parte, 128 D.P.R. at pages 255-256; see, Underwriters Nat. Assur. v. N.C. Life & Acc., Etc., 455 U.S. 691, 704-705 (1982); Hanson v. Denckla, 357 U.S. 235, 249-250 (1958); Williams v. State of North Carolina, 317 U.S. 287, 293-295 (1942).

The present case deals with a habeas corpus order entered by the New York Family Court requiring Appellant to produce the minors before that forum and adjudicating provisional custody thereof to the Respondent.

The appealed judgement in the case of record was entered after the Court ordered the elimination of the allegations of the Appellant because of her non appearance to several hearing dates. That determination, which affected the right of the Appellant to be heard regarding the merits of the petition, was entered by the Court of First Pleas without exhausting other less burdensome alternatives such as, the imposition of financial

sanctions, contrary to the doctrine established by the Supreme Court of Puerto Rico, Maldonado v. Secretario de Recursos Naturales, 113 D.P.R. 494, 498 (1982); Garriga Gordils v. Maldonado Colón, 109 D.P.R. 817, 822 (1980); Arce v. Club Gallístico de San Juan, 105 D.P.R. 305, 308 (1976), and despite that the Appellant had shown her interest in defending herself in the case and had raised reasonable defenses in view of the petition of the Respondent. Neptune Packing Corp. v. Wackenhut Corp., 120 D.P.R. 293, 293 (1988); Imp. Vilca, Inc. v. Hogares Crea, Inc., 118 D.P.R. 679, 686 (1987).

However, the elimination of the allegations of the Appellant did not impede her from questioning the jurisdiction of the court whose determination there it intends to execute. Hernández v. Hernández Espinosa, 145 D.P.R. ___ (1998), J.T.S. 41, at page 784; Continental Ins. Co., v. Isleta Marina, 106 D.P.R. 809, 817 (1978).

In this sense it is questionable whether the type of order presented by the Respondent merits receiving our full faith and credit under the cited clause of the Federal Constitution.

In fact, the Supreme Court of the United States has clarified that the purpose of the full faith and credit clause is that judgements entered by the courts of other states receive the same treatment as judgements from local judicial bodies. Magnolia Petroleum Co., v. Hunt, 320 U.S. 430,443 (1943). Thus, on some occasions it has been raised that said clause is only applicable to final decisions and not to interlocutory

determinations. See Ackerman v. Ackerman, 517 f. Supp. 614, 622-623 (S.D. N.Y. 1981); American Fidelity Fire Ins. Co. v. Paste-Ups Unlimited, Inc., 368 F. Supp. 219, 225-226 (S.D.N.Y. 197); Mall v. La Bow, 635 A. 2d 871, 873-874 (Conn. App. 1993); Iverson. v. Inverson, 247 N.Y.S. 2d 960, 965-966 (N.Y. Sup. 1964); Sullivan v. McFexridge, 55 N.Y.S. 2d 511, 528-529 (N.Y. Sup. 1945).

In the situation of record had it been entered by another part of the Parts of the Court of First Pleas of Puerto Rico, the appealed part would not be indefectibly bound to put into the effect the order whose recognition is demanded since, in fact it does not deal with a final decision. Rivera v. Insurance Co. of P.R., 103 D.P.R. 91, 94 (1974). Therefore, it cannot be collaterally attacked.

In any case, the Appellant raises that according to the 1980 Parental Kidnapping Prevention Act, 28 U.S.C. sec. 1738A, the New York Court lacked jurisdiction over the matter.

That statute, as it is known, pursues the regulation of conflicts between the different jurisdictions of the United States in custody of minor cases and dissuades the tactic of moving minors from one place to another to escape an adverse court decision. An elaborate scheme to define the jurisdiction that enjoys preferential authority to adjudicate this type of controversy was adopted. Pérez Pascual v. Vega Rodríguez, 124 D.P.R. 529, 538 (1989); Perrón v. Corretjer, 113 D.P.R. 593, 599-601 (1982).

Under to have jurisdiction over a case of this nature, a State has to: (1) have jurisdiction under its own laws, and (2) comply with any of the following conditions:

(A) (i) being the State of residence of the minor on the date of the start of the procedures, or (ii) having been the State of residence of the minor six (6) months prior to the start of the procedures and that the minor is absent because he or she has been moved or retained by one or the parents, or because of another reason, and the plaintiff remains in that State;

(B) (i) there arises that based on the circumstances no other state has jurisdiction and, (ii) the court of said state assumes jurisdiction for the greater well-being of the minor because: (1) the minor and his or her parents, the one or one of the litigants has a significant contact with the State beyond the mere physical presence in it; and (2) there exists and is available in that State substantial evidence relative to the care, protection, training and present and future personal relationships of the minor;

(C) the minor is present physically in that state and has been abandoned or there is an emergency that requires his or her protection because he or she has received threats or has been exposed to abuse or mistreatment;

(D) there arises that no other state has jurisdiction under the (A), (B), (C) and (E) criteria: or another state has declined to exercise it under the basis that the state whose jurisdiction is in

controversy is the most adequate forum to determine such custody and that for the other court to assume jurisdiction is in favor of the minor; and

(E) the court has continuous jurisdiction based on the above clause. 28 U.S.C. sec. 1738A; Perrón v. Corretjer, 113 D.P.R. at pages 602-603.

Under the general principle under the announced norms is that the Court where the minor resides is the one that has preferential jurisdiction to intervene in this type of cases. When the minor is moved outside of the jurisdiction, that preference continues for a period of six (6) months after that the new state of residence of the minor will have acquired preferential jurisdiction over the matter (clause A). See, Sterzinger v. Ramirez, 116 D.P.R. 762, 786 (1985); Perrón v. Miranda, 114 D.P.R. 25, 28 (1983).

This principle cedes when the minor has not been continuously present in any of the jurisdictions for more than six (6) months, so there is no state of residence (clause B), or when the minor has been abandoned, or there is an emergency that requires his protection (clause C). It may also cede when the state that enjoys preferential jurisdiction declines to exercise it for the benefit of another state (clause D), in such a situation, the jurisdiction of the latter may be exercised in a continuous manner (clause E).

An examination of the circumstances expressed in the

precept persuades us that the Court of First Pleas erred when concluding that the State of New York enjoys preferential jurisdiction under the cited law.

In fact, there is no controversy between the parties regarding that at the beginning of the habeas corpus procedure the minors were no longer residents of the State of New York nor had they been so during the six (6) months prior to the start of that procedure. It is clear that under the explicit terms of the law, preferential jurisdiction over the controversy regarding the custody of the minors had fallen on the Puerto Rico courts.

Nor were there present any of the exception circumstances recognized in clauses (B) or (C) of the precept.

However, the Court of First Pleas understood that the State of New York could validly execute preferential jurisdiction because that state had adjudicated custody previously and because the Respondent continued to reside in that jurisdiction.

The interpretation of the distinguished lower Part lacks support in the clear wording of the statute that conditions the exercise of jurisdiction in the circumstances to no other state having jurisdiction in the case or to, if it has it, it would have declined to exercise it.

In the situation of record the state of residence of the minors turns out to be Puerto Rico; it is where they now reside. Although we acknowledge that the Respondent has an interest in that the custody of the minors be adjudicated in New York,

where he resides, and where the original decision granting custody of the minors to the respondent was entered, this does not constitute a factor that can set aside the policy adopted by the law. Pursuant to what the Supreme Court of Puerto Rico has stated:

> The forum that makes the determination as to custody cannot, under any circumstances at all, be the one that is convenient to the parents or to one of them, but rather the one that best serves the interests of the minor. They taking into consideration that in it [Parental Kidnapping Prevention Act] preference is given to the state of residence of the minor, because it is understood that it is the one that can best determine what is more beneficial for the child. It in that state where the child has made friends, attends school and receives medical assistance: where his life has developed. Therefore, it understood that the state of residence of the minor is where there is a greater possibility that evidence required to make a proper determination as to custody is available. One that takes into account what is more convenient for the minor. So if there is a conflict regarding which is the applicable jurisdictional requirement according to P.K.P.A., the one of state of residence of the minor should always prevail.

Ortega, Jr. v. Morales Ortega, 131 D.P.R. 783, 792 (1992).

The case cited above of Ortega, Jr. v. Morales Ortega involved circumstances very similar to the ones of the case of record. There it dealt with a couple that had married and had resided in the state of California for many years where they had procreated a minor child. The parties had started a divorce

process in California, the mother moving to Puerto Rico with the boy while said procedure was pending. Afterward, the Court of California entered a decision adjudicating the custody of the minor to the mother.

Three years later, the father petitioned and obtained a decree from the California court modifying the original custody decision and granting him custody of the minor. The mother questioned the jurisdiction of the California court but said forum denied her allegation entering a decision in the absence of the mother who did not appear before that state.

Different from the action of the appealed forum in the case of record, in that situation the Court of First pleas refused to grant full faith and credit to the decision. The Supreme Court of Puerto Rico confirmed that decision, stating:

> In the case of record, the boy was not in California at the beginning of the procedure, nor had he been in that state the six (6) months prior to the start of the procedure. Therefore, there was no compliance with the provisions of clause (A) of the California law that is equivalent to the Parental Kidnapping Prevention Act. Also there was no compliance with the provisions of clause (B) of said section. It requires that the best interests of the minor be taken in consideration when assuming jurisdiction in a case to modify custody. This determination is made by the court evaluating the following facts: that the boy and his parents or the boy and one of the parents have a significant relationship with the state and that there is substantial evidence in that state about the care, protection, training and future and

> present personal relations of the minor. In the case of record there is no doubt that was so for some time. However, the minor moved to Puerto Rico with his mother since the divorce of his parents was processed. He has been residing here since then. So, it is here where the best evidence to decide about the best interests of the minor is found. Puerto Rico is the forum with greater contacts with the minor, the present state of residence of the minor.

Ortega, Jr. v. Morales Ortega, 131 D.P.R. at page 794.

Similarly, in the case of record, under the principles established by the Parental Kidnapping Prevention Act, Puerto Rico was, on the date the procedures were started, the state of residence of the minors.

The Respondent alleges that the habeas corpus order constitutes a continuous exercise of the jurisdiction New York had acquired through it first determination of custody. The habeas corpus procedure in question, is a procedure different from the one that was aired by the parties in that state. In this sense, it is a significant fact that the Appellant was never served personally nor notified prior to the entering of said order by the New York Court.

That notice, as it is known, constitutes an indispensable requirement of due process of law. Connecticut v. Doehr, 501 U.S. 1, 9-18 (1991); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 312-315 (1950); Márquez v. Barreto, 143 D.P.R. 137, 142 (1997); Rivera Rodríguez & Co. v. Lee Stowell, etc., 133 D.P.R. 881, 889 (1993). In the absence thereof, it is also

not proper to grant full faith and credit to the order from the New York Court. See, May v. Anderson, 345 U.S. 528, 429 (1953); compare, Perrón v. Corretjer, 113 D.P.R. 593.

In its judgement, the appealed Part estimated that the previous service upon Appellant was not necessary because it dealt with an ex-parte order to require the appearance of the minors in New York. However, the order in question is not limited to requiring that the Appellant take the minors to New York, but rather it proceeded to adjudicate their provisional custody in favor of the Respondent without giving the Appellant any opportunity at all to be heard and without notifying her of the existence of said procedure. The power of a court to issue order to affect persons who reside in other jurisdictions is subject to the constitution. Asahi Metal Ind. v. Super. Ct. of Cal., Solano City., 480 U.S. 102, 113, (1987); Kulko v. Superior Court of California, etc., 436 U.S. 84, 91 (1978); International Shoe Co. v. State of Washington, etc., 326 U.S. 310, 319 (1945).

In the situation of record we are persuaded that the order entered by the New York Family Court was contrary to due process of the law because of ich the same should not be put into effect.

Because of the foundations stated above the appealed sentence is revoked.

Wet Stamp: (Signed)

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In San Juan, Puerto Rico, on the 23rd of April 2002.

Lydia Platón

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Certified Court Interpreter and Translator

THE COMMONWEALTH OF PUERTO RICO
COURT OF FIRST PLEAS
PONCE SUPERIOR PART

The Commonwealth of Puerto Rico)
The President of the United States) S.S. CIVIL NO.:
The Commonwealth of Puerto Rico) J EX 1999-030
RICHARD RIVERA GALARZA) Room 406
PLAINTIFF)
VS.) RE: EXEQUATUR
MARIA CRISTINA COLON LABOY)

JOSE A TORO VARGAS, ESQ. PO BOX 1791, PONCE PR 00732-7191

PABLO COLON SANTIAGO, ESQ., PO BOX 1175, COTO LAUREL, PR 00780-1175

JEANETTE SOTO VEGA, FAMILY RELATIONS ADVOCATE, PO BOX 330466, PONCE, PR 00733-0466

NOTICE OF JUDGEMENT

The subscribing CLERK notifies you that on the 18th of December of 2000, this Court has entered a judgement in the captioned case which is recorded filed in the record of this case where you may find out in detail about the terms thereof.

And, since you are or represent the party prejudiced by the sentence about which an appeal recourse may be established, I

address this notice to you having filed in the record of this case a copy thereof on the 18th of December of 2000.

Ponce, P.R., on the 31st of January of 2001.

CARMEN ANA TORRES
Clerk

By: (Signed)
ROSANA PEREZ RODRIGUEZ
Assistant Clerk

CERTIFICATION

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THE COMMONWEALTH OF PUERTO RICO
COURT OF FIRST PLEAS
PONCE SUPERIOR PART

RICHARD RIVERA GALARZA Plaintiff	CIVIL NO.: JEX1999-130
vs.	ABOUT:
MARÍA CRISTINA COLON LABOY Defendant	EXEQUATOR

JUDGEMENT

Mr. Richard Rivera Galarza brought before us a complaint against Ms. María Colón Laboy on the 16th of August of 1999, in which he has petitioned that we grant full faith and credit to a decision by the Family Court of the Bronx, in the State of New York that granted to him provisional custody of the minors Cristina Rivera Colón and José A. Colón. In synthesis he alleged that in concubine relations with Ms. Colón Laboy he procreated a girl; that afterward he filed two judicial processes in the State of New York that were recorded under numbers V-12484/99 and V-12485/99; and that by virtue of said judicial processes the New York Court granted the Plaintiff the custody of the minors Cristina Rivera Colón and José A. Colón.

The Defendant answered the complaint on January 3, 2000 after proper service.

On the 26th of September of 2000 we entered a contempt against the Defendant after her unjustified non appearance on several dates and proceeded to eliminate her allegations.

The trial started on the 5th of October of 2000, after several procedural incidents. This process continued until the following day.

With the benefit of the evidence that was set forth and the briefs from all parties supporting their respective contentions, we proceed to formulate the following:

DETERMINATIONS OF FACTS

The parties had a relationship during several years as a product of which the minor Cristina Rivera Colón was born on the 19th of November of 1992 in the Bronx, State of New York.

Around or by 1994 a series of litigations between the parties commenced due to different reasons because of which and as a consequence thereof, the New York Court made an initial decision regarding the custody of the minors Cristina Rivera Colón and José A. Colón, granting it to the Defendant María C. Colón Laboy.

By the month of August of 1998 the parties were involved in a litigation that was recorded with number N-983-4-96 in which each was represented by counsel and the children, Cristina Rivera Colón and José A. Colón were represented by legal counsel appointed by the Court.

As part of that litigation the Family Court of the State of New York granted custody of the children to the mother supervised by the Administration for Children Services agency.

In the middle of said judicial process without asking permission from the Court or the Agency that supervised her in the custody of her children, Ms. María C. Colón Laboy abandoned the State of New York and on the 21st of January of 1999 came to Puerto Rico together with her children leaving two minor children, Emilio and Michelle Colón, in the above-mentioned state.

On March 2, 1999, Ms. Colón Laboy had been subpoenaed to testify in the New York Family Court. In view of her failure to appear and due to the manifestations made in open court by an official of the Administration for Children Services and by the attorney for the Defendant, Mr. Richard Rivera found out that she had abandoned the state of New York and had moved to Puerto Rico.

On the 29th of July of 1999 Mr. Richard Rivera Galarza filed a Habeas Corpus recourse before the New York Court in which he petitioned that Ms. María Colón Laboy appear before the New York Court together with the minor children, Cristina Rivera Colón and José A. Colón for the continuation of the custody litigation.

Because of that recourse, the Honorable Judge Harold J. Lynch ordered that the minors Cristina Rivera Colón and José A. Colón be brought before the Honorable Judge Tandra Dawson for a continuance of further procedures as to the recourse and the final determination about custody. It also granted provisional custody of the minors to Mr. Richard Rivera while the judicial process was pending.

Pursuant to that decision Mr. Richard Rivera Galarza filed before us the complaint in question a copy of which he served to the Defendant as soon as he located her in Puerto Rico.

In keeping with the Determinations of Facts consigned above the Court enters the following:

FINDINGS OF FACTS

In its **Article IV, Section 1** the Constitution of the United States of America establishes the following:

> AIn each State good faith and credit should be granted to the Public Acts, Records and Judicial Procedures of the other States . . .

In the same manner, the Supreme Court of Puerto Rico has established the norms of Private International Law that govern the recognition and ratification of foreign judgements which can be summarized as follows:

1. That the foreign judgement has been entered by a court **with jurisdiction over the person and matter**

that it is the object thereof.

2. That the judgement has been entered by a **competent court.**

3. That the **due process of the law** has been observed by the Court that entered the judgement.

4. That the system under which the judgement was entered is distinguished by its impartiality and absence of prejudice against foreigners.

5. That the judgement entered abroad is not contrary to the law of the required or local forum; that it is not contrary to the basic principles of justice and that it was not obtained through fraud. **Marquez Estrella, Ex parte, 128 DPR 243 (1991); Efectos Litográficos v. Nat. Paper & Type Co., 112 DPR 389 (1982).**

Those are the general norms to be used to determine whether a foreign decision should be given full recognition and validity. **Silva Oliveras v. Durán Rodríguez, 119 DPR 254 (1987).** If the cited rules are not met when a decision is entered aboard, it will not be granted full faith and credit.

On its part, for a State Court to acquire jurisdiction over the matter in a custody case and subsequently being able to grant validity and recognition to the judgement it enters, there must be compliance with the statutory requirements of Section **1738A** of title 28 of the United States Code Service, **28 U.S.C.S. ' 1738A,** which in its pertinent part establishes that a

Court has jurisdiction to decide about custody only when:

A(c) (1) The Court has jurisdiction under the laws of that State; and

(2) One of the following is met:

1) The State (i) is the Home State of the minor on the day in which the procedures commenced or (ii) it has been the Home State of the minor during the six months prior to the day in which the procedures started and the child is absent from the State because he or she was removed or retained or due to other reasons, and that the petitioner continues to live in said State. ; ...

Clause (b)(4) of Section **1738A** of title 28 of the United States Code Service, **28 U.S.C.S. ' (b) (4)**, defines a Home State of a minor as the State in which the child lived with his or her parents, with a parent, or with a person acting as a parent, for six consecutive months before the start of the litigation.

On its part, **clause (d)** of **Section 1738A** itself is an exception to the rule that in order for a State to have jurisdiction over the custody of a minor it must be the Home State of said minor. That clause establishes that the jurisdiction of a court that has previously decided custody will continue as long as said court maintains jurisdiction under the laws of the State while the child, or petitioner, maintain their residence in it. **28 U.S.C.S ' 1738A (d)**. Therefore, the mere residence for over

six months in one State is not the sole factor to be considered when determining which is the court that has jurisdiction over the matter.

Thus, the State of New York has continuous jurisdiction **to modify previous custody determinations** even when the minor has lived outside said State for over six months, if one of the parents continues living in it and if New York had jurisdiction when deciding custody that is modified. **Jesús A. v. Lizette A., 546 N.Y.S. 2d. 284 (1989); Philip v. Sharon S., 137 Misc. 2d. 385 (1987); Noguera v. Noguera, 514 N.Y.S. 2d. 542 (1987); Heiter v. Hoosin, 533 N.Y.S. 2d. 600 (1988).**

In keeping with the above, in the State of New York it has been recognized that to determine which State should have jurisdiction over the matter of custody of a minor, the federal jurisprudence has established a series of factors that must be analyzed. Factors such as where was the initial determination as to custody made; whether the petitioner continues to reside and work in the State of New York; whether the minor was born and lived in said State until the removal; and whether the medical and school records are in New York, among others. **Jesús A. v. Lizette A., supra.**

On the other hand, in this case the validation of a court order entered by the Family Court of the State of New York which compels the defendant to appear before the New York Court with the purpose of continuing judicial processes related

to the custody of his children is petitioned. **That order grants provisional custody of the minors, Cristina Rivera Colón and José A. Colón, to the Plaintiff.**

The judicial process related to said order started on the 29th of July of 1999 with the filing of a habeas corpus recourse before the New York Court by Mr. Richard Rivera Galarza. Although the order about which there is a pretension that we validate was noticed to Defendant after it was entered, that does not signify a violation of due process of the law.

The legal norms that govern our habeas corpus recourse establish that the same is one of a provisionary nature **(Civil Practice Law and Rules ' 7009)** that must be entered without any delay by the court before which the petition is made. That court can also enter an order to the petitioned party to show cause about why such recourse is not proper. **Civil Practice Law and Rules ' 7003.** Said order established that the petitioned party has to appear before the court that enters it to continue the proceedings regarding the custody of the detained person. This is not a final resolution of the court but rather an order entered provisionally until the case is decided on its merits. The order is entered **without prior notice** to the petitioned party, **Civil Practice Law and Rules ' 7002 (a))**, since the notice needed to comply with due process of the law in that case is met by serving the petitioned person with the order entered by the Court.

Keeping in mind the above-mentioned foundations, let us

analyze the factual reality of the case before our consideration and let us apply those foundations to the facts of this case.

We are before a case in which the Plaintiff pretends that an order entered by a foreign court be given full faith and credit, a fact because of which the norms established by the legal provisions in effect that regulate the exequatur proceedings must be met.

As we established before, to comply with that procedure, the judgement or order must have been entered by a court **with jurisdiction over the person and over the matter**, the court must have jurisdiction, due process of the law must have been followed, the judgement cannot be contrary to the law of the local forum and the system under which it was entered must be distinguished because of its impartiality and absence of prejudice against foreigners.

In this case, pursuant to the legal provisions in effect, the New York Court had jurisdiction to deal with the matter of custody of the minors, Cristina Rivera Colón and José A. Colón since, although technically it was not the Home state of the minors, said Court was the one that had previously adjudicated the det rmination as to the custody of the children and in that determination it had validly acquired the jurisdiction needed to deal with the litigation. In turn, the children were born and raised in the State of New York until the mother left the State without authorization from the Court; both parents have a significant connection with that State; the Plaintiff continues to

live and work in New York; and the minors have medical and school records in New York. These are part of the factors that indicate that the minors have a significant connection with the State of New York, and that said State had jurisdiction to deal with the Habeas Corpus Petition interposed by the Plaintiff Richard Rivera Galarza to claim custody of his children.

On the other hand, as we have indicated, the order that the Plaintiff pretends that we give full faith and credit to was entered as a consequence of a habeas corpus recourse filed by it in the Family Court of the State of New York. In that process the Honorable Judge Harold J. Lynch entered said judicial award without prior notice to Ms. Colón Laboy of the process that was ongoing. However, because of the summary nature of the recourse prior notice **was not** necessary to comply with due process since what is ordered therein is that the Defendant appear before that Court to continue with the process that had commenced. The notice needed to comply with due process is given to the petitioned party after the entering of the order, when she is informed of the need for her to appear and face the procedures started against her. In this case the needed notice was met when the subpoena was served (of the complaint before us) upon the person of the Defendant since at that very moment the Defendant obtains knowledge that she has to appear in the State of New York to continue the judicial procedure. Upon serving said subpoena due process is complied with because the petitioned party is given the notice needed for the New York Court to acquire

jurisdiction over her person.

Because of the foundations stated above the Court ADMITS the complaint in the captioned case and as a consequence thereof resolves to grant full faith and credit to the decision entered by the Honorable Judge Harold J. Lynch in cases number V-12484 and V-12485, ordering the Defendant to immediately proceed to deliver the minors, Cristina Rivera Colón and José A. Galarza to the Plaintiff and to go before the Family Court of the State of New York for the continuation of the procedures initiated there and that concern this case.

LET IT BE RECORDED AND NOTIFIED:

In Ponce, Puerto Rico, on December 18, 2000.

(Signed)
JOSE A. RUIZ RIVERA
Superior Judge

CERTIFICATION

I LYDIA PLATON qualified as Federal Court Interpreter and Translator under the Federal Court Interpreter Act for Spanish-English Court, certificate number 00056, CERTIFY: that the foregoing is a correct translation of the original document in the Spanish language.

In San Juan, Puerto Rico, on the 23rd of April 2002.

Lydia Platón

LYDIA PLATON

Certified Court Interpreter and Translator

THE COMMONWEALTH OF PUERTO RICO
COURT OF FIRST PLEAS
PONCE SUPERIOR PART

RICHARD RIVERA GALARZA Plaintiff	CIVILNO: JEX1999-130
vs.	ABOUT:
MARÍA CRISTINA COLON LABOY Defendant	EXEQUATOR

****RESOLUTION****

Having tended to the Petition for Reconsideration promoted by the Family Relations Advocate through Atty. Jeanette Soto Vega, as well as the Opposition of Defendant, the Court resolves: The Petition for Reconsideration is DENIED. The foundations as to the facts and law contained in the Motion in Opposition promoted by the captioned Plaintiff are made part of the record.

LET IS BE NOTIFIED

JOSE A. RUIZ RIVERA
SUPERIOR JUDGE

NOTICE:

> ATTY.: Pablo Colón Santiago, PO Box 1175, Coto Laurel, PR 00780

>ATTY.: José Ramón Vargas, PO Box 7197 Ponce, PR 00732

>ATTY.: Jeannette Soto Vega, PO Box 330466, Ponce PR 00732

In Ponce, Puerto Rico on the 23rd of August of 2001.

(Signed)
Carmen Ana Torres
General Clerk

By: (Illegible Stamp/ Initials)
Assistant Clerk

cnc/13 August 01

CERTIFICATION

I LYDIA PLATON qualified as Federal Court Interpreter and Translator under the Federal Court Interpreter Act for Spanish-English Court, certificate number 00056, CERTIFY: that the foregoing is a correct translation of the original document in the Spanish language.

In San Juan, Puerto Rico, on the 23rd of April 2002.

Lydia Platón

LYDIA PLATON
Certified Court Interpreter and Translator

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

In the Matter of a Proceeding under
Article of the Family Court Act

Docket No. V-12454/99

RICHARD RIVERA Petitioner,

-against-

MARIA COLON,
A/K/A MARIA CRISTINA COLON, LABOY
Respondent

WRIT OF
HABEAS CORPUS

TO: MARIA COLON
a/k/a MARIA CRISTINA COLON, LABOY

A petition having been filed in this Court by Richard Rivera , the Petitioner herein, alleging that (1) CRISTINA RIVERA (dob 11/15/92) (and) JOSE A. COLON (dob 2/22/88) (are) (wrongfully and unlawfully held by) MARIA COLON, and that they are in IMMINENT RISK of serious harm.

(2) MARIA COLON IS A FLIGHT RISK. MARIA COLON, fled the jurisdiction of the Bronx, New York, removing the subject children with her, while in the midst of litigation involving their protection.

(3) MARIA COLON failed to keep the New York City Administration for Children Services apprised of her whereabouts while the subject children were in her care, but under A.C.S. Supervision.

(4) MARIA COLON has an extensive history of abusing her children, including punishing them by placing their hands over open flames, locking them in closets, hitting them with belts, and other objects, and making them kneel on rice.

(5) MARIA COLON has intimidated her children, and forced them to lie to Child Protective Agency Caseworkers, and others investigating allegations of Child Neglect.

(6) MARIA COLON, on or about March 2,1999, Abandoned her minor Children, EMILIO COLON (d.o.b. 12/1/80), and MICHELLE COLON (d.o.b. 10/27/82) the siblings of the subject children.
MARIA COLON has had no contact with, nor has made any provisions for the care of these minor children since prior to March, 1999.

(7) MARIA COLON has repeatly violated Orders of the NEW YORK STATE FAMILY COURT, BRONX COUNTY directing sibling visitations.

(8) MARIA COLON, as a result of her actions, has denied the Petitioner the right to maintain a relationship with his daughter, CRISTINA RIVERA, and has denied the subject children any, and all contact with their siblings.

Accordingly it is hereby,

ORDERED that the minors CRISTINA RIVERA, and JOSE A. COLON be produced FORTHWITH before the Honorable TANDRA DAWSON, a Judge of the Family Court of the State of New York at 900 Sheridan Avenue, Bronx, New York 10451, for such further proceedings as the Court may direct, and it is further,

ORDERED that the Police, Child Protective Agencies, or other governmental authorities, Where the Subject Children are found, are to asist in returning the Children FORTHWITH to the Bronx, New York.

ORDERED that pending further proceedings of Custody, and Guardianship of CRISTINA RIVERA, and JOSE A. COLON are awarded to RICHARD RIVERA who is to return the subject children to the Bronx County for further proceedings.

Date JUL 20 1999 19

ENTER

Harold J. Lynch
J.F.C.

Hon. Harold J. Lynch
J.F.C.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

In the Matter of a Proceeding under
Article of the Family Court Act

Docket No. V-12485/99

RICHARD RIVERA Petitioner.

-against-

MARIA COLON,
A/K/A MARIA CRISTINA COLON, LABOY
Respondent

WRIT OF
HABEAS CORPUS

TO: MARIA COLON
a/k/a MARIA CRISTINA COLON, LABOY

A petition having been filed in this Court by Richard Rivera , the Petitioner herein, alleging that (1) CRISTINA RIVERA (dob 11/19/92) (and) JOSE A. COLON (dob 2/22/88) (are) (wrongfully and unlawfully held by) MARIA COLON, and that they are in IMMINENT RISK of serious harm.

(2) MARIA COLON IS A FLIGHT RISK. MARIA COLON, fled the jurisdiction of the Bronx, New York, removing the subject children with her, while in the midst of litigation involving their protection.

(3) MARIA COLON failed to keep the New York City Administration for Children Services apprised of her whereabouts while the subject children were in her care, but under A.C.S. Supervision.

(4) MARIA COLON has an extensive history of abusing her children, including punishing them by placing their hands over open flames, locking them in closets, hitting them with belts, and other objects, and making them kneel on rice.

(5) MARIA COLON has intimidated her children, and forced them to lie to Child Protective Agency Caseworkers, and others investigating allegations of Child Neglect.

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(8) MARIA COLON, as a result of her actions, has denied the Petitioner the right to maintain a relationship with his daughter, CRISTINA RIVERA, and has denied the subject children any, and all contact with their siblings.

Accordingly it is hereby,

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ORDERED that pending further proceedings of Custody, and Guardianship of CRISTINA RIVERA, and JOSE A. COLON are awarded to RICHARD RIVERA who is to return the subject children to the Bronx County for further proceedings.

JUL 29 1999

Date: 19

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY OF THE FOREGOING ORDER MADE IN THIS MATTER DESIGNATED IN EVIDENCE COPY AND SHOWN BY THE RECORDS OF THE FAMILY COURT OF THE STATE OF NEW YORK WITHIN THE CITY OF NEW YORK, FOR THE COUNTY OF BRONX.

CLERK OF COURT

DATE AUG 12 1999

ENTER

J.F.C.

J.F.C.